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No. 79.

Brf. of Atty. Gen'l

Appellee.

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In the Supreme Court of the United States.

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PETER AMBROSINI, PLAINTIFF IN ERROR,
v.
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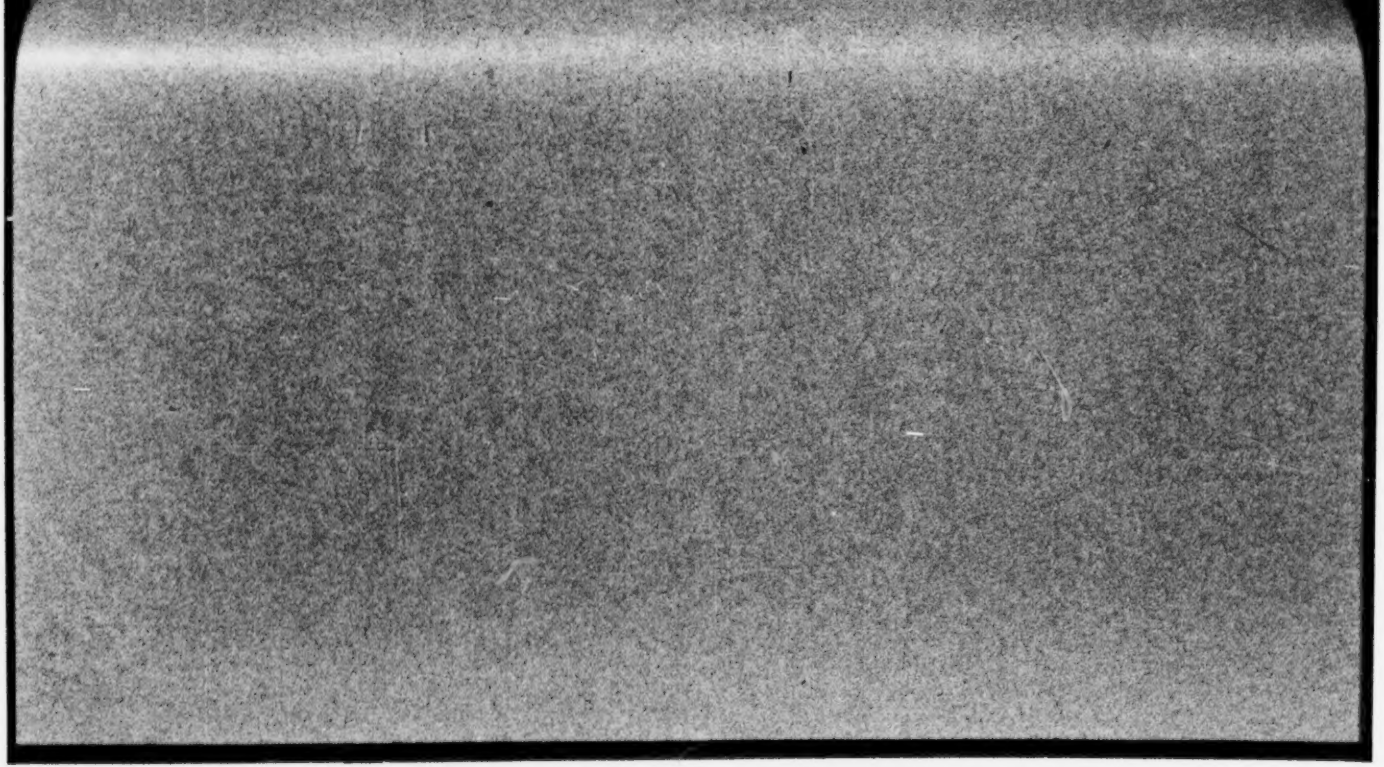
ARGUMENT FOR APPELLEE.

JAMES M. BECK,
Assistant Attorney-General.



In the Supreme Court of the United States.

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PETER AMBROSINI, PLAINTIFF IN ERROR,
v.
THE UNITED STATES.
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ARGUMENT FOR APPELLEE.

This appeal involves two questions:

(1) Is a bond, required by a State law from an applicant for a license to sell liquors, taxable under the war-revenue act of 1898?

(2) If within the purview of the act, is such taxation constitutional?

Each question will be separately considered.

I.

The war-revenue act of 1898 imposes a stamp duty upon a bond which an applicant for a license to sell liquor at retail is obliged by the law of a State or municipality to give, as a prerequisite for the issuance of such license.

Section 6 of the war-revenue act of 1898 (30 Stat. L., 448, 451) provides as follows:

> That on and after the 1st day of July, 1898, there shall be levied, collected, and paid, for and in respect of the several bonds, debentures, or

certificates of stock and of indebtedness, and other documents, instruments, matters, and things mentioned and described in Schedule A of this act, or for or in respect of the vellum, parchment, or paper upon which such instruments, matters, or things, or any of them, shall be written or printed by any person or persons, or party who shall make, sign, or issue the same, or for whose use or benefit the same shall be made, signed, or issued, the several taxes or sums of money set down in figures against the same, respectively, or otherwise specified or set forth in the said schedule.

Schedule A of the war revenue act provides (id., 460):

Bond: For indemnifying any person or persons, firm or corporation, who shall have become bound or engaged as surety for the payment of any sum of money, or for the due execution or performance of the duties of any office or position, and to account for money received by virtue thereof, *and all other bonds of any description*, except such as may be required in legal proceedings, not otherwise provided for in this schedule, fifty cents.

Section 17 of the act provides (id., 455):

That all bonds, debentures, or certificates of indebtedness issued by the officers of the United States Government, or by the officers of any State, county, town, municipal corporation, or other corporation exercising the taxing power, shall be, and hereby are, exempt from the stamp taxes required by this act: *Provided*, That it is the intent hereby to exempt from the

stamp taxes imposed by this act such State, county, town, or other municipal corporations in the exercise only of functions strictly belonging to them in their ordinary governmental taxing or municipal capacity. *Provided further*, That stock and bonds issued by cooperative building and loan associations whose capital does not exceed ten thousand dollars, and building and loan associations or companies that make loans only to their shareholders, shall be exempt from the tax herein provided.

It is clear that this bond is within the provisions of Schedule A, for that schedule makes the sweeping provision that "all other bonds of any description, except such as may be required in legal proceedings," must be stamped. This, in effect, makes every kind of a bond taxable except such as are expressly exempted. It is therefore only necessary to inquire whether these liquor-license bonds are within the exceptions provided in the act.

Neither of the bonds was given in the course of any legal proceedings. The licenses in question were not granted by any court, but by the executive department of the government—in one case by the county board and in the other by the mayor of the city of Chicago. The acts were therefore ministerial in nature and in no sense judicial.

The only other section under which an exemption could be claimed is the proviso of section 17, exempting "State, county, town, or other municipal corporations in the exercise only of the functions strictly

belonging to them in their ordinary governmental, taxing, or municipal capacity."

This exemption is obviously intended as a statement of a class of subjects which, under our constitutional system, the Federal Government could not tax. The present bonds were given by individuals who are in no respect connected with the Government either of the State, county, or town; the bond is not given in the exercise of any function strictly belonging to a State, county, or town. The regulation of the liquor traffic is no necessary function of government. Even if it were, the bond given by a citizen who desires a license is not an agency or instrumentality of the State, and such bond is, therefore, not within the exempted class. This will be more fully discussed as I pass to the second question.

II.

The Federal Government can constitutionally impose a stamp duty upon a liquor-license bond, given by a licensee, even when such bond is required by the law of a State or municipality as an incident to the regulation of the liquor traffic.

In the discussion of this question it should be remembered that—

(*a*) The law does not attempt to tax any direct agency of government, or any officer thereof.

(*b*) It does not require anything of anybody who represents the State government in any way.

(*c*) While it may incidentally affect an act done in pursuance of the municipal regulations of a State, yet

such municipal regulation (being in this instance the regulation of the liquor traffic) is not a direct agency of the State or any necessary function thereof.

(*d*) The tax is placed upon a bond given by an individual *before* he can secure the privilege of selling liquor. It is the act of a person and not of the Government.

The State law which requires that a dram-shop keeper shall give a bond is as follows (section 5 of the dram-shop act, Revised Statutes of Illinois, 1899, p. 723):

> *No person shall be licensed* to keep a dram shop, or to sell intoxicating liquors, by any county board, or the authorities of any city, town, or village, *unless he shall first give bond in the penal sum of $3,000*, payable to the people of the State of Illinois, with at least two good and sufficient sureties, freeholders of the county in which the license is to be granted, and to be approved by the officer who may be authorized to issue the license, conditioned that he will pay to all persons all damages that they may sustain, either in person or property, or means of support, by reason of the person so obtaining a license selling or giving away intoxicating liquors. The officer taking such bond may examine any person offered as security upon any such bond, under oath, and require him to subscribe and swear to his statement in regard to his pecuniary ability to become such security. Any bond taken pursuant to this section may be

> sued upon for the use of any person, or his legal representatives, who may be injured by reason of the selling or giving away any intoxicating liquor by the person so licensed, or by his agent or servant.

The other bond was given in pursuance of an ordinance of the city of Chicago, which provided as follows:

> The mayor of the city of Chicago shall, from time to time, grant licenses for the keeping of dramshops within the city of Chicago to persons who shall apply to him in writing therefor and shall furnish evidence satisfying him of their good character. Each applicant shall execute to the city of Chicago a bond, with at least two sureties, to be approved by the city clerk or city collecter, in the sum of five hundred dollars, conditioned that the applicant shall faithfully observe and keep all ordinances in force at the time of the application or thereafter to be passed during the period of the license applied for, and will keep closed on Sundays all doors opening out upon any street from the bar or room where such dramshop is to be kept; and that all windows opening upon any street from such bar or room shall, on Sundays, be provided with blinds, shutters, or curtains, so as to obstruct the view from such street into such room. *No application for a license shall be considered until such bond shall have been filed.*

It thus appears that the first bond is given for the benefit of any individual who may sustain damage by reason of any act done by the licensee. The second

bond is given to insure the faithful performance of the ordinances of the city of Chicago with reference to the sale of liquor. Both must be given before the license can be issued.

It is obvious, therefore, that both bonds are given by private citizens as mere incidents to the municipal regulation of the liquor traffic, and are therefore in no sense instrumentalities of the State government. It is within the power of the State of Illinois as a police regulation to make the sale of liquor a privilege, but such sales are equally within the taxing power of the United States. (License Tax Cases, 5 Wall., 462.) The Federal Government may license a retail dealer to sell liquor, and exact a tax, and the State may pass a prohibitory liquor law which will destroy the business, and thus reduce the revenues of the Government, but the prohibitory law is not an interference with any agency or instrumentality of the Government; it merely destroys the business of an individual, which the Federal law has seen fit to tax. Similarly, the Federal Government can tax to death the privilege of selling liquor, which the State law has, for the purposes of revenue or as a police regulation, created and given to an individual. It might not have the power to impose a stamp duty upon a license which the State government issues, for such license, being given by an officer of the State, is a direct act of the State, but the Government could impose a tax upon sales of liquor which would be so large that none could profitably engage in this calling, and this would prevent the issuance of any licenses at all. If selling liquor or

regulating the traffic were direct and necessary functions of government, neither Federal nor State government could thus interfere with each other. If the Federal Government can tax the liquor traffic to death it can impose a duty upon a bond which a saloon keeper gives as a mere incident to the regulation of his business. To hold otherwise would be to assert that any act or thing which the municipal laws of a State may require of a citizen as a municipal regulation is exempt from Federal taxation. Suppose, for example, that a State should pass a law that no title to property should pass from one citizen to another unless a deed were formally executed and recorded. The imposition of a duty on the official records which are kept by the officers of the Government would probably be void—for such official records are agencies of the Government—but such imposition on a deed which the vendor executes to the vendee, even though such deed be required by State law, is not void. To hold otherwise would be to extend the ruling in *M'Culloch* v. *Maryland* (4 Wheat., 316) far beyond its original purpose. That case is the foundation for the doctrine, for it is needless to state that the inability of either the Federal or State governments to tax the agencies or instrumentalities of the other is one of the great implications of the Constitution. In that case Congress incorporated the Bank of the United States for fiscal purposes, and the State of Maryland sought to impose a tax upon it. Chief Justice Marshall, in his luminous opinion, after deducing from the Constitution

the power to create a bank for fiscal purposes, says, with reference to the direct point now in question (p. 430):

> We find, then, on just theory, a total failure of this original right to tax the means employed by the Government of the Union for the execution of its powers. The right never existed, and the question whether it has been surrendered can not arise.

And again (p. 432):

> If the States may tax one instrument employed by the Government in the execution of its powers they may tax any and every other instrument. They may tax the mail; they may tax the mint; they may tax patent rights; they may tax the papers of the custom-house; they may tax judicial process; they may tax all the means employed by the Government to an excess which would defeat all the ends of government. This was not intended by the American people. They did not design to make their government dependent on the States.

Page 439:

> This opinion does not deprive the States of any resources which they originally possessed. It does not extend to a tax paid by the real property of the bank in common with the other real property within the State, nor to a tax imposed on the interest which the citizens of Maryland may hold in this institution in common with other property of the same description throughout the State. *But this is a tax on the operations of the bank and is, consequently, a tax*

on the operation of an instrument employed by the Government of the Union to carry its powers into execution. Such a tax must be unconstitutional.

It is obvious from these quotations that the class of subjects exempted were not those which are merely affected by the municipal regulations of a State, but are the direct agencies of the State itself. There must be a clear distinction between such direct agencies and instrumentalities and the class of subjects which are simply affected by municipal regulations. A municipal regulation, for example, may require that all telegraph and telephone wires which private corporations may lay shall be put under ground. The construction of the underground conduits, therefore, is an act which the corporation must do under the requirements of the State law as a condition for exercising their franchises, yet it can hardly be contended that such underground conduits are necessary agencies of the government and exempt from Federal taxation, even though essential to the safety of life and property. State laws may, for example, require factories and theatres to be equipped with permanent fire escapes, erected under the supervision of the municipal authorities, but fire escapes are not agencies of the Government, even though erected at the mandate of the State and under its direction.

The police powers of the State require the doing of innumerable acts and affect many classes of property, but it has never yet been contended that the property of citizens is for this reason and because of municipal control exempted from Federal taxation. These saloon

bonds do not differ in principle. While required by law, yet they are acts of the individual, and their requirement is nothing but a police regulation. They are simply designed to indemnify citizens in one case and the city in the other from any unlawful conduct by the licensee.

The Government assents to the proposition that the necessary independence of the Federal and State governments imposes a limitation upon the taxing power of each, and that neither can exercise such power in a manner that will curtail the rightful powers of the other or interfere with the free discharge of its governmental functions or destroy the means or agencies employed by it in the exercise of those powers and functions. *But this doctrine, being founded on no express provision of the Constitution and arising rather from necessary implication, must be fairly limited to such direct agencies or instrumentalities of government as are a necessary part of its administrative functions.* To enlarge the doctrine so as to admit of any property or any act which municipal law may seek to regulate might remove nearly all taxable property from the sphere of Federal taxation.

The appellant chiefly relies upon the class of cases which hold that the salaries or bonds of State officers can not be taxed. (*Dobbins* v. *Commissioners*, 16 Peters, 435; *Collector* v. *Day*, 11 Wallace, 113.) I do not dispute the doctrine of these cases. As government is impersonal, and can act only through human beings, its officers are the direct agents of the State, and as was said in both cases, "the salary or compensation

for the service of an officer was inseparably connected with the office." But such cases have no analogy whatever to a citizen not an officer or employee of the State, who, as a condition for obtaining a license to sell liquor, is required to give a bond. A liquor licensee is not an official or an agent of the State.

A liquor licensee has no more direct connection with the Government than a corporation which receives its charter, together with pecuniary or other aid from the United States, and which is sometimes used by the United States for governmental purposes, such as the carriage of the mails or the transportation of troops, etc., and yet such corporation was held to be taxable on the ground that it was not an agency or instrumentality of the State. See *Railroad Company* v. *Peniston*, 18 Wall., 5; *Thompson* v. *Union Pacific Railroad Company*, 9 Wall., 579.

In the latter case the railroad company was employed in the service of the Government and claimed exemption on that ground. The road was constructed under the direction and authority of Congress for the uses and purposes of the United States. These aids were granted by Congress in the exercise of its constitutional powers to regulate commerce, to establish post-offices and post-roads, to raise and support armies, and to suppress insurrection and invasion; and it was, therefore, claimed to be an instrumentality of Government.

Said Chief Justice Chase (p. 589):

> It is unquestionably true that the court, in determining the second general question, already stated, did hold that the Bank of the United

States, with its branches, was exempt from taxation by the State of Maryland, although no express exemption was found in the charter. *But it must be remembered that the Bank of the United States was a corporation created by the United States;* and, as an agent in the execution of the constitutional powers of the Government, was endowed by the act of creation with all its faculties, powers, and functions. It did not owe its existence, or any of its qualities, to State legislation. And its exemption from taxation was put upon this ground. Nor was the exemption itself without important limitations. It was declared not to extend to the real property of the bank within the State, *nor to interests held by citizens of the State in the institution.* * * *

It is true that some of the reasoning in the case of *McCulloch* v. *Maryland* seems to favor the broader doctrine. But the decision itself is limited to the case of the bank, as a corporation created by a law of the United States, and responsible in the use of its franchises, to the Government of the United States.

We do not think ourselves warranted, therefore, in extending the exemption established by the case of *McCulloch* v. *Maryland* beyond its terms. We can not apply it to the case of a corporation deriving its existence from State law, exercising its franchise under State law, and holding its property within State jurisdiction and under State protection.

We do not doubt the propriety or the necessity, under the Constitution, of maintaining the

supremacy of the General Government within its constitutional sphere. We fully recognize the soundness of the doctrine that no State has a "right to tax the means employed by the Government of the Union for the execution of its powers." *But we think there is a clear distinction between the means employed by the Government and the property of agents employed by the Government. Taxation of the agency is taxation of the means; taxation of the property of the agent is not always, or generally, taxation of the means.*

We perceive no limits to the principle of exemption which the complainants seek to establish. It would remove from the reach of State taxation all the property of every agent of the Government. Every corporation engaged in the transportation of mails, or of Government property of any description, by land or water, or in supplying materials for the use of the Government, or in performing any service of whatever kind, might claim the benefit of the exemption. The amount of property now held by such corporations, and having relations more or less direct to the National Government and its service, is very great. And this amount is continually increasing; so that it may admit of question whether the whole income of the property which will remain liable to State taxation if the principle contended for is admitted and applied in its fullest extent may not ultimately be found inadequate to the support of the State governments.

In *Railroad Company* v. *Peniston* (18 Wall., 5) the State imposed a tax upon the real and personal prop-

erty of the Union Pacific Railroad Company, a corporation chartered by Congress, and which Congress assisted by donations of lands and loans, and in whose internal control it participated by the appointment of two directors. The loans were made on condition that the company should serve certain governmental purposes. The court held that such taxes were lawful.

Said Mr. Justice Strong (p. 30):

> There are, we admit, certain subjects of taxation which are withdrawn from the power of the States, not by any direct or express provision of the Federal Constitution, but by what may be regarded as its necessary implications. They grow out of our complex system of government, and out of the fact that the authority of the National Government is legitimately exercised within the States. While it is true that government can not exercise its power of taxation so as to destroy the State governments, or embarrass their lawful action, it is equally true that the States may not levy taxes the direct effect of which shall be to hinder the exercise of any powers which belong to the National Government. The Constitution contemplates that none of those powers may be restrained by State legislation. But it is often a difficult question whether a tax imposed by a State does in fact invade the domain of the General Government, or interfere with its operations to such an extent, or in such a manner, as to render it unwarranted. It can not be that a State tax which remotely affects the efficient exercise of a Federal power is for that reason alone inhibited

> by the Constitution. To hold that would be to deny to the States all power to tax persons or property. Every tax levied by a State withdraws from the reach of Federal taxation a portion of the property from which it is taken, and to that extent diminishes the subject upon which Federal taxes may be laid. The States are, and they must ever be, coexistent with the National Government. Neither may destroy the other. Hence the Federal Constitution must receive a practical construction. Its limitations and its implied prohibitions must not be extended so far as to destroy the necessary powers of the States, or prevent their efficient exercise.

In *United States* v. *Railroad Company* (17 Wall., 322) it was held that a tax upon the bonds of the Baltimore and Ohio Railroad by the Federal Government was invalid to the extent that such bonds were held by the city of Baltimore; not because the bonds of railway companies could not be taxed, but because the act in question was in effect a taxation of the city of Baltimore, and the collection of the money from the railroad company was a mere method of collecting it.

In the *Income Tax case* (157 U. S., 429), the court was unanimous that the income from municipal bonds could not be taxed, and in the opinion by Chief Justice Fuller the authorities on the general question are reviewed (pp. 583, 586).

It will be observed that all of the cases in which the power of taxation has been withheld are predicated upon the fact that the things taxed are the direct property or acts or agencies of the State, and are not things done

by an individual at the command of the State as an incident of police regulation. This is the vital distinction between this line of cases and the case at bar.

The fact that the obligor in the bond becomes a licensee by operation of law is not important. Even if it were, the two sureties who join in the execution of the bonds do not occupy even a quasi-official relation to the State Government.

There may be persons having relations with the Government who are not necessarily agencies of the Government. In *Whitehouse* v. *Langdon* (10 N. H., 331) a contractor for carrying the United States mail was held not to be an officer of the United States Government. While an oppressive tax might be levied upon the emoluments of such contractor, and thus the operations of the Government might be indirectly and incidentally affected, yet such fact will not work an exemption.

The most recent attempt to exempt property from Federal taxation under the doctrine of *McCulloch* v. *Maryland* was *Knowlton* v. *Moore*, (178 U. S., 41). In that case it was argued by the appellants that the transmission of property after death being exclusively the creation of State law, that it was not the subject of Federal taxation, as such taxation would interfere and perhaps destroy such creation of State law. This court, while conceding that the "right to regulate successions" is vested in the States and not in Congress (p. 58), yet held that inheritance duties could be imposed by Congress. The clear distinction between a taxable subject which may be affected

by legal regulations and the direct agencies of the State is plainly pointed out by this court. Referring to the contention that the right of transmission after death, being the creation of State legislation, could not be taxed by Congress, Mr. Justice White says (p. 59):

> But the fallacy which underlies the proposition contended for is the assumption that the tax on the transmission or receipt of property occasioned by death is imposed on the exclusive power of the State to regulate the devolution of property upon death. The thing forming the universal subject of taxation upon which inheritance and legacy taxes rest is the transmission or receipt, and not the right existing to regulate. In legal effect, then, the proposition upon which the argument rests is that wherever a right is subject to exclusive regulation, by either the Government of the United States on the one hand or the several States on the other, the exercise of such rights as regulated can alone be taxed by the government having the mission to regulate. But when it is accurately stated, the proposition denies the authority of the States to tax objects which are confessedly within the reach of their taxing power, and also excludes the National Government from almost every subject of direct and many acknowledged objects of indirect taxation. Thus imports are exclusively within the taxing power of Congress. Can it be said that the property when imported and commingled with the goods of the State can not be taxed, because it had been at some prior time the subject of exclusive regulation by Congress? Again, in-

terstate commerce is often within the exclusive regulating power of Congress. Can it be asserted that the property of all persons or corporations engaged in such commerce is not the subject of taxation by the several States because Congress may regulate interstate commerce? *Conveyances, mortgages, leases, pledges, and indeed all property, and the contracts which arise from its ownership, are subject more or less to State regulation, exclusive in its nature. If the proposition here contended for be sound, such property or dealings in relation thereto can not be taxed by Congress, even in the form of a stamp duty.* It can not be doubted that the argument when reduced to its essence demonstrates its own unsoundness, since it leads to the necessary conclusion that both the national and State governments are divested of those powers of taxation which from the foundation of the Government admittedly have belonged to them. Certainly a tax placed upon an inheritance or legacy diminishes to the extent of the tax the value of the right to inherit or receive, but this is a burden cast upon the recipient and not upon the power of the State to regulate.

Referring to the argument urged in that case, as it has been urged in this, that the power of the Government to tax is the power to destroy, Mr. Justice White further says (p. 60):

> But this reasoning has no application to a lawful tax, for if it had there would be an end of all taxation—that is to say, if a lawful tax can be defeated because the power which is

> manifested by its imposition may when further exercised be destructive, it would follow that every lawful tax would become unlawful, and therefore no taxation whatever could be levied. Under our constitutional system both the National and the State governments, moving in their respective orbits, have a common authority to tax many and diverse objects, but this does not cause the exercise of its lawful attributes by one to be a curtailment of the powers of government of the other, for if it did there would practically be an end of the dual system of government which the Constitution established.

The indisposition of this court to extend this implied constitutional restriction of the taxing power is further illustrated by the case of *United States* v. *Perkins* (163 U. S., 625). In the case a citizen of New York State bequeathed personal property by will to the United States, and the question arose whether the bequest was subject to the State inheritance law. This court held that it was, Mr. Justice Brown saying (p. 630):

> We think that it follows from this that the act in question is not open to the objection that it is an attempt to tax the property of the United States, since the tax is imposed upon the legacy before it reaches the hands of the Government. The legacy becomes the property of the United States only after it has suffered a diminution to the amount of the tax, and it is only upon this condition that the legislature assents to a bequest of it.

Reasoning by analogy, I submit that a bond which an applicant for a license gives as a condition prece-

dent to obtaining a license is not only his act but his property until delivered to the State, and the imposition of a stamp duty upon it, while in his hands and under his control, is, therefore, not the taxing either of the property of the State or of anything done by the State. To hold otherwise would be a very great and perhaps dangerous extension of the doctrine of implied exemptions from the taxing power of State and nation.

At first blush the appellant's contention may seem comparatively unimportant. On the contrary, it is a very serious denial of the power of the Federal Government to tax, a power which is vital to its existence. If sustained by this court each State could put much of the taxable property of its citizens beyond the reach of the Federal tax-gatherer by simply bringing it within the operation of its police regulations. Such a decision could not be other than serious. Every presumption should be against such a curtailment of the taxing power of the Federal Government. Apart from the fact that, as I have said, the exemption is but an implication of the Constitution, it is true, as was said by Mr. Chief Justice Waite, in the *Sinking Fund* cases, (99 U. S., 700, 718):

> Every possible presumption is in favor of the validity of a statute, and this continues until the contrary is shown beyond a reasonable doubt.

JAMES M. BECK,
Assistant Attorney-General.

O

Supreme Court of the United States.

No. 14.—October Term, 1902.

Peter Ambrosini, Plaintiff in Error, vs. The United States. } In error to the District Court of the United States for the Northern District of Illinois.

[October 20, 1902.]

This was a writ of error brought to reverse a judgment of the District Court imposing a fine on a finding of guilty of an offense under section seven of the act of Congress entitled "An act to provide ways and means to meet war expenditures, and for other purposes," (30 Stat. 448, c. 448,) otherwise known as the war revenue act of 1898. The indictment contained two counts. The first charged that defendant on August 30, 1898, executed a certain bond in the penal sum of $3,000 to the People of the State of Illinois without affixing to the bond a fifty-cent revenue stamp, alleged to be required by said act of Congress. The second count charged that defendant on August 30, 1898, executed a certain bond to the city of Chicago in the penal sum of $500 without affixing thereto a fifty-cent revenue stamp, alleged to be required by the act. The bonds were set forth *in extenso*. A motion to quash the indictment was made and overruled, and, a jury being waived, the cause was submitted to the court for trial, defendant found guilty, and sentenced to pay a fine. The opinion is reported 105 Fed. Rep. 239.

Sections 6, 7 and 17 of the act are as follows:

"Sec. 6. That on and after the first day of July, eighteen hundred and ninety-eight, there shall be levied, collected, and paid, for and in respect of the several bonds, debentures, or certificates of stock and of indebtedness, and other documents, instruments, matters, and things mentioned and described in Schedule A of this act, or for or in respect of the vellum, parchment, or paper upon which such instruments, matters, or things, or any of them, shall be written or printed by any person or persons, or party who shall make, sign, or issue the same, or for whose use or benefit the same shall be made, signed, or issued, the several taxes or sums of money set down in figures against the same, respectively, or otherwise specified or set forth in the said schedule. . . .

"Sec. 7. That if any person or persons shall make, sign, or issue, or cause to be made, signed, or issued, any instrument, document, or paper of any kind or description whatsoever, without the same being duly stamped for denoting the tax hereby imposed thereon, or without having thereupon an adhesive stamp to denote said tax, such person or persons shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not more than one hundred dollars, at the discretion of the court, and such instrument, document, or paper, as aforesaid, shall not be competent evidence in any court."

"SEC. 17. That all bonds, debentures, or certificates of indebtedness issued by the officers of the United States Government, or by the officers of any State, county, town, municipal corporation, or other corporation exercising the taxing power, shall be, and hereby are, exempt from the stamp taxes required by this act: *Provided*, That it is the intent hereby to exempt from the stamp taxes imposed by this act such State, county, town, or other municipal corporations in the exercise only of functions strictly belonging to them in their ordinary governmental, taxing, or municipal capacity: *Provided further*, That stock and bonds issued by co-operative building and loan associations whose capital stock does not exceed ten thousand dollars, and building and loan associations or companies that make loans only to their shareholders, shall be exempt from the tax herein provided."

Schedule A contained this provision: "Bond: For indemnifying any person or persons, firm, or corporation who shall have become bound or engaged as surety for the payment of any sum of money, or for the due execution or performance of the duties of any office or position, and to account for money received by virtue thereof, and all other bonds of any description, except such as may be required in legal proceedings, not otherwise provided for in this schedule, fifty cents."

The bonds, to which it was alleged the stamps should have been affixed, were bonds required by the laws of Illinois to be given as a condition of the issue of licenses to keep dram shops or sell intoxicating liquors in the State of Illinois and in the city of Chicago.

Sections one, two and five of an act of the general assembly of the State of Illinois, entitled "An act to provide for the licensing of and against the evils arising from the sale of intoxicating liquors," read:

"§ 1. That a dram-shop is a place where spirituous or vinous or malt liquors are retailed by less quantity than one gallon, and intoxicating liquors shall be deemed to include all such liquors within the meaning of this act.

"§ 2. Whoever, not having a license to keep a dram-shop, shall, by himself or another, either as principal, clerk or servant, directly or indirectly, sell any intoxicating liquor in any less quantity than one gallon, or in any quantity to be drank upon the premises, or in or upon any adjacent room, building, yard, premises or place of public resort, shall be fined not less than twenty dollars ($20) nor more than one hundred dollars ($100), or imprisoned in the county jail not less than ten nor more than thirty days, or both, in the discretion of the court."

"§ 5. No person shall be licensed to keep a dram-shop, or to sell intoxicating liquors, by any county board, or the authorities of any city, town or village, unless he shall first give bond in the penal sum of $3,000, payable to the People of the State of Illinois, with at least two good and sufficient sureties, freeholders of the county in which the license is to be granted, to be approved by the officer who may be authorized to issue the license, conditioned that he will pay to all persons all damages that they may sustain, either in person or property, or means of support, by reason of the person so obtaining a license selling or giving away intoxicating

liquors. The officer taking such bond may examine any person offered as security upon any such bond, under oath, and require him to subscribe and swear to his statement in regard to his pecuniary ability to become such security. Any bond taken pursuant to this section may be sued upon for the use of any person, or his legal representatives, who may be injured by reason of the selling or giving away any intoxicating liquor by the person so licensed, or by his agent or servant." 2 Starr & Curtis, Anno. Stat. Ill. (2d ed) 1586, c. 43.

By article five, chapter 24, of the statutes of Illinois concerning cities, it was provided:

"§ 1. The city council in cities, and president and the board of trustees in villages, shall have the following powers:" . . .

"*Fourth.* To fix the amount, terms and manner of issuing and revoking licenses." . . .

"*Forty-sixth.* To license, regulate and prohibit the selling or giving away of any intoxicating, malt, vinous, mixed or fermented liquor, the license not to extend beyond the municipal year in which it shall be granted, and to determine the amount to be paid for such license: . . . *Provided, further,* That in granting licenses, such corporate authorities shall comply with whatever general law of the State may be in force relative to the granting of licenses."

. . . "*Ninety-sixth.* To pass all ordinances, rules, and make all regulations proper or necessary to carry into effect the powers granted to cities or villages, with such fines or penalties as the city council or board of trustees shall deem proper: . . ." 1 Starr & Curtis, (2d ed.) 689, c. 24.

The Revised Code of Chicago of 1897 provided: "The mayor of the city of Chicago shall, from time to time, grant licenses for the keeping of dram shops within the city of Chicago to persons who shall apply to him in writing therefor, and shall furnish evidence satisfying him of their good character. Each applicant shall execute to the city of Chicago a bond, with at least two sureties, to be approved by the city clerk or city collector, in the sum of five hundred dollars, conditioned that the applicant shall faithfully observe and keep all ordinances in force at the time of the application or thereafter to be passed during the period of the license applied for, and will keep closed, on Sundays, all doors opening out upon any street from the bar or room where such dram shop is to be kept; and that all windows opening upon any street from such bar or room shall, on Sundays, be provided with blinds, shutters or curtains, so as to obstruct the view from such street into such room. No application for a license shall be considered until such bond shall have been filed." 1 Rev. Code, 1897, p. 253, c. XXXIX, art. I.

The ordinance contained many other specific regulations of the traffic, and provided that licenses might be revoked by the mayor for violation of "any provision of any ordinance of the city council relating to intoxicating liquors, or any condition of the bond aforesaid."

The conditions of the bond in the sum of $3,000 to the People of the State of Illinois were substantially in the words of the statute. The conditions of the bond in the sum of $500 to the city of Chicago were somewhat more stringent than the language of the municipal code.

Mr. Chief Justice FULLER delivered the opinion of the Court:

By the dramshop act the general assembly of Illinois legislated, as was stated in the title of the act, "against the evils arising from the sale of intoxicating liquors," not by prohibiting the traffic altogether, but by regulating it in protection of the public. The act concerning cities authorized municipal action subject to the general law.

The legislation was enacted in the exercise of the police power for the safety, welfare and health of the community, and it is conceded that that power is a power reserved by the States, free from Federal restriction in any particular material here.

The act and the ordinance required these bonds to be given as prerequisites to the issue of licenses permitting the sale. The licenses could not be issued without compliance with this condition precedent. The statute expressly provided that no license should be granted "unless he shall first give bond in the penal sum of $3,000," and the ordinance, that "no application for a license shall be considered until such bond shall have been filed."

The bonds were obviously intended to secure the proper enforcement of the laws in respect of the sale of intoxicating liquors; the prompt payment of fines and penalties; a remedy for injuries in person, property or means of support; and the protection of the public in divers other enumerated particulars. The granting of the licenses was the exercise of a strictly governmental function, and the giving of the bonds was part of the same transaction. To tax the license would be to impair the efficiency of State and municipal action on the subject and assumes the power to suppress such action. And considering license and bond together, taxation of the bond involves the same consequences. In themselves the bonds were not mere incidents of the regulation of the traffic, but essential safeguards against its evils, and governmental instrumentalities of State and of city, as authorized by the State, to insure the public welfare in the conduct of the business, although the business itself was not governmental. They were not mere individual undertakings to secure a personal privilege as suggested by the court below, but means for the preservation of the peace, the health and the safety of the community in compelling strict observance of the law, and remedying injurious results.

The general principle is that as the means and instrumentalities employed by the General Government to carry into operation the powers granted to it are exempt from taxation by the States, so are those of the

States exempt from taxation by the General Government. It rests on the law of self-preservation, for any government, whose means employed in conducting its strictly governmental operations are subject to the control of another and distinct government, exists only at the mercy of the latter. Nelson, J., *Collector* v. *Day*, 11 Wall. 113.

Viewed in the light of that general principle, we think it clear that Congress, lest the broad language of Schedule A, "and all other bonds of any description," might literally cover bonds such as those in question, and in avoidance of controversy in that regard, exempted them by section 17, wherein it was declared that it was intended "to exempt from stamp taxes imposed by this act, such State, county, town, or other municipal corporations in the exercise only of functions strictly belonging to them in their ordinary governmental, taxing or municipal capacity." True, this language was used in a proviso, and the enacting clause exempted bonds "issued by the officers of any State, county, town, municipal corporation or other corporation exercising the taxing power;" but as the bonds were required by the State and the city and were issued for the benefit of the public and not for the benefit of the individuals who executed them, it appears to us that they came fairly within the meaning of the clause, assuming that they were covered by Schedule A. The question is whether the bonds were taken in the exercise of a function strictly belonging to the State and city in their ordinary governmental capacity, and we are of opinion that they were, and that they were exempted as no more taxable than the licenses. Either they were exempt, apart from the proviso, because, in the sense of the statute, issued by the State and city, or the proviso so far qualified the language of the enacting clause as to exempt them in exempting the State and city in respect of the exercise of strictly governmental functions.

We conclude, therefore, that they were not taxable within the statute. *United States* v. *Owens*, 100 Fed. Rep. 70; *Stineman* v. *Smith*, 100 Fed. Rep. 600; *Warwick* v. *Bettman*, 102 Fed. Rep. 127; *S. C.*, 108 Fed. Rep. 46; *People* v. *City*, 31 C. L. N. 247.

Judgment reversed and cause remanded with a direction to quash the indictment.

Mr. Justice HARLAN did not hear the argument and took no part in the decision.

True copy.

Test:

Clerk Supreme Court, U. S.